IN THE HIGH COURT OF DELHI

CM(M) No. 932/2007 & CM(M) No. 938/2007

Arti Arora .....Petitioner
! through: Mr. Kuljeet Rawal, Advocate

VERSUS

$ Phool Chand Jain ..... Respondent
^ through: Mr. R.S.Kela, Advocate

RESERVED ON: 4.12.2007

% DATE OF DECISION: 7.12.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Arti Arora has challenged orders dated 16.4.2007 allowing Phool Chand Jain to amend his plaint in the suit filed by him seeking a decree for declaration and permanent injunction as also permitting him to amend his written statement in the suit filed by Arti Arora claiming a decree for possession and damages.

2. Arti Arora has sought possession of a garage on the ground floor from Phool Chand Jain. She claimed that his status was that of a licensee. Phool Chand Jain has sought a

declaration that he is a tenant in respect of the entire first floor, entire barsati floor and the garage under Usha Rani and Ravi Prakash.

3. The amendment allowed for is to permit Phool Chand Jain to plead that during pendency of the two suits he had acquired the title to the garage under the sale deed dated 29.12.1995 purportedly executed by Ravi Prakash.

4. Whether or not the impugned orders should be sustained require a look at the pleaded antecedent title of the parties pertaining to property bearing Municipal No. 60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi. It would require a look at the original pleadings of the parties. The core issue which has to be decided is: whether the amendment is bona fide or not.

5. I may note that Phool Chand Jain filed the suit in the year 1988. Arti Arora filed the suit in the year 1990. The amendments were sought by Phool Chand Jain somewhere in the year 2003.

6. Let me refer to the pleadings of Phool Chand Jain in the suit filed by him.

7. He pleaded that Late Sh. Om Prakash was the owner of property bearing Municipal No. 60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi. That vide lease dated 24.6.1968 he

lease the entire property for a period of 90 years to his wife Smt. Shakuntala Devi. That Phool Chand Jain was inducted as a tenant by Sh. Om Prakash in respect of the rear portion of the first floor, entire barsati floor and a garage on the ground floor in the year 1964. That one Sh. P.C.Nanda occupying the front portion of the first floor vacated the same. Om Prakash let out the said front portion to him. Thus, he became a tenant under Om Prakash of the entire first floor. That Om Prakash died on 25.2.1978. That with the execution of the lease in favour of Shakuntala Devi by her husband, Om Prakash, he i.e. Phool Chand Jain started paying rent to Shakuntala Devi till she expired in the year 1984. That when Shakuntala Devi died her estate was inherited by her daughter Usha Rani and Ravi Prakash the son of the pre deceased son of Shakuntala Devi namely Prem Prakash. He stated that on the death of Shakuntala Devi, Usha Rani and Ravi Prakash became the landlord of the property.

8. He further pleaded that Usha Rani and Ravi Prakash did not realize any rent from him. He further pleaded that Rajiv Aggarwal is the son of Usha Rani and that Usha Rani, Ravi Prakash and Rajiv Aggarwal were colluding with each other to harass him with the intent that he vacates the tenanted premises.

9. Pertaining to Arti Arora he pleaded that she had started claiming having purchased half undivided share in the property. He stated that she claimed said right pursuant to some purchase made by her from Rajiv Aggarwal.

10. Claiming that Usha Rani, impleaded as defendant No.1, Ravi Prakash impleaded as defendant No.2, Rajiv Aggarwal impleaded as defendant No.3 and Arti Arora impleaded as defendant No.4 were trying to forcibly evict him from the first floor, barsati floor and the garage on the ground floor of property bearing No. 60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi, he sought a declaration that he be declared a tenant of the entire first floor, entire barsati floor and the garage on the ground floor under Usha Rani and Ravi Prakash. He sought a decree of injunction restraining the defendants from dispossessing him from the tenanted premises or causing any obstruction in his enjoyment of the property.

11. Ravi Prakash, defendant No.2 of the suit filed a written statement in which he pleaded as under:-

> 1. Para 1 is note denied except for the averment in which the plaintiff claims himself to be tenant interalia of the garage on the ground floor. It is submitted that the 'Garage' on the ground floor is not a part of the tenanted premises, which were let out to the plaintiff by late Shri Om Prakash the original owner/landlord of the plaintiff. The answering defendant is the owner and landlord of the tenanted premises on the first floor and Barsati floor. The ownership of the ground floor lies with the

defendant No.3 and therefore the answering defendant, is in no position or capacity to comment upon the plaintiff's status vis-a-vis 'garage' qua the defendant No.3.

It is submitted that the plaintiff has projected the garage as an integral part of the tenanted premises with a malafide intention and an ulterior motive. It is not in the knowledge of the answering defendant, as to how the plaintiff may have come to acquire any interest in the garage and even if the averment of the plaintiff is ultimately found to be correct, it is obvious that he would acquire the said interest under an independent agreement with the defendant No.3."

12. In reply to para 5 of the plaint, in the written statement Ravi Prakash responded as under:-

"5. The contents of para 5 are admitted. However it is clarified that the answering defendant is claiming himself to be the owner only in respect of the first floor, barsati floor and the common portions of ground floor of the house No.60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi and not as co-owner with the defendant No.3 in respect of the ground floor premises."

13. Responding to para 1 of the written statement filed by Ravi Prakash, in the replication, Phool Chand Jain pleaded as under:-

"1. That para No.1 of the written statement is admitted to the extent to which it admits corresponding para of the plaintiff and the contents of the plaint are reiterated and reaffirmed. However, it is also stated that the para under reply is vague, uncertain and ambiguous."

14. Arti Arora claimed that she purchase the entire ground floor of the property in question including the garage block and half undivided share from Rajiv Aggarwal.

15. The pleadings of the parties in the cross suits and

the written statements thereto as originally laid clearly reveal that Ravi Prakash disclaimed any ownership right in respect of the garage on the ground floor. He categorically pleaded that he claims ownership of only the first floor and the barsati floor. Rajiv Aggarwal claimed ownership of the ground floor. He further admitted having sold entire ground floor which included the garage portion to Arti.

16. Seeking to amend his plaint and written statement filed by him, Phool Chand Jain filed two amendment applications; one in the suit filed by him and the other in the suit filed by Arti. He pleaded that Ravi Prakash had initiated proceedings against him before the rent controller and had compromised the matter admitting that he i.e. Phool Chand Jain was a tenant under him in respect of the garage portion. Further, vide sale deed dated 19.12.1995 he i.e. Ravi Prakash sold to him the garage on the ground floor.

17. Learned Trial Judge allowed both the applications vide two separate orders dated 16.4.2007 holding that the subsequent events were necessary and essential for a fair and effective determination of the real controversy between the parties. Operative part of both the orders is identically worded. I note the same. It reads as under:-

> "After hearing arguments, I am of the considered opinion that the proposed amendments are on

> account of subsequent events and developments, discussed above and the same have become necessary and essential for the fair and effective determination of the real controversy between the parties. The dismissal of the present application will lead to multiplicity of litigation between the parties which is neither desirable nor warranted. Further more, it will be appropriate if the dispute between the parties is decided once for all on merits by giving proper opportunities to the parties and the technical aspect of the matter, if any, as far as possible, have to be ignored. I have highest regard to the case law cited on behalf of the defendant but the same are distinguishable in nature and the case law cited on behalf of the plaintiff are fully applicable to the facts and circumstances of the present case."

18. At the outset it may be noted that the learned Trial Judge has nowhere referred to pleadings of Ravi Prakash, contents whereof have been noted by me hereinabove in the suit filed by Phool Chand Jain.

19. Further, learned Trial Judge has not noted the reply of Phool Chand Jain in his replication to the written statement filed by Ravi Prakash wherein he admitted the averments made by Ravi Prakash in para 1 of his written statement.

20. The learned Trial Judge has not discussed the impact and the relevance of said pleadings.

21. A bare reading of the pleadings aforenoted in the written statement filed by Ravi Prakash and replication thereto filed by Phool Chand Jain ex-facie reveal that Ravi Prakash categorically stated that he was the owner and claimed ownership right only in respect of the first floor and the barsati

floor of property bearing Municipal No. 60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi. He disclaimed any concern, right, title or interest in the garage block.

22. It is the common pleading of all parties that Om Prakash was the owner of the property and his interest devolved equally on Ravi Prakash (50%) and Rajiv Aggarwal (50%) the son of Usha Rani who was the daughter of Om Prakash. Further, Ravi Prakash claimed that his half share in the suit property was an identified share being the entire first floor and the barsati floor. He stated that the entire ground floor including the garage block was the share of Rajiv Aggarwal. Pleadings of Ravi Prakash continue to be the same. His admission that he has no concern with the garage block continues to remain the same.

23. How can Phool Chand Jain claim title to the garage block under Ravi Prakash remains a mystery.

24. No doubt, power of amendment is very wide. Amendments at a delayed stage can be allowed provided they are necessary to determine the real controversy in the suit. Further, subsequent events can be incorporated by way of amendments to the existing pleadings provided they are relevant. Even inconsistent pleas can be permitted to be raised by way of amendments provided they are not mutually

destructive. But, as observed in the decision reported as 2007 (5) SCC 602 *Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.* the *courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the either side or on the ground that the prayer for amendment was not a bona fide one.*

25. It has to be noted that Arti laid foundation to her claim by relying upon a sale deed executed in her favour by Rajiv Aggarwal. Ravi Prakash who was defendant No.3 in the suit filed by her did not challenge the sale deed. Her claim under the sale deed executed by Rajiv Aggarwal was laid in the year 1990 when she filed the suit. Phool Chand Jain was defendant No.1 in the suit. Ravi Prakash was defendant No.3 in the suit. Limitation for challenging the sale deed is three years. 3 years have gone by long ago. Challenge to the sale deed in favour of Arti Arora as of the year 2003 when amendment was prayed for would be barred by limitation. Not only that Ravi Prakash categorically pleaded that he had no interest in the garage.

26. By allowing the amendment the respective suits would now get converted into title suits. The limited controversy pertaining to the status of Phool Chand Jain whether he was a tenant in respect of the garage block or

whether he was a licensee as envisaged in the original pleadings would be converted into issues of title between Rajiv Aggarwal and Ravi Prakash. This in turn would lead the court to adjudicate further question as to how legal heirs of Om Prakash who inherited 50% share in his property partitioned the same.

27. Ex facie, the amendment would bring in issues wholly beyond what were conceived of in the original pleadings.

28. But, what is relevant is the pleadings of Ravi Prakash to the effect that he had no concern, right, title or interest in the garage block of property bearing Municipal No. 60/10, Prabhat Road, W.E.A. Karol Bagh, New Delhi. These admissions continue to exist in his pleadings. Claiming title under Ravi Prakash, pertaining to the garage block, Phool Chand Jain cannot be permitted to urge pleas which are contrary to the pleadings of Ravi Prakash for the reason Phool Chand Jain claims title to the garage block under Ravi Prakash.

29. In my opinion the amendment is wholly mala fide. It is obviously a case where Ravi Prakash has colluded with Phool Chand Jain. It would not be out of place to mention that the amendment claimed for was in the year 2003. The alleged sale deed relied upon for purposes of amendment is dated 29.12.1995. It has not been explained as to why for nearly 8 years Phool Chand Jain never brought to the fore the said sale

deed.

30. The petitions are allowed.

31. Both the impugned orders dated 16.4.2007 permitting Phool Chand Jain to amend his plaint as also his written statement are set aside. Both the applications seeking amendment are dismissed.

32. Petitioners are entitled to one set cost in sum of Rs.5,000/-.

December 7, 2007 PRADEEP NANDRAJOG
MM JUDGE